

Are Zombie Agreements Haunting Your Workplace?

1

Does your organisation have any zombie agreements currently operating? Check [here](#) and internally.

No
No further action

Yes

2

Does your organisation engage any employees under any of these agreements?

No
No further action

Yes

3

Have you notified covered employees of your next steps in writing? This must be done before 6 June 2023

Yes
No further action

No
Penalties may apply

Here to help

If you are unsure if your business still has zombie agreements in place, or needs support managing compliance, please reach out via employment@lawsquared.com

Zombie Agreements:

Your need-to-know guide



Australian employers could soon face heavy penalties if they fail to comply with new workplace requirements relating to the sunset of pre-Fair Work Act 2009 (Cth) (FW Act) instruments (a.k.a 'zombie agreements') later this year.

What is a zombie agreement?

A "zombie agreement" is an industrial instrument made before 1 January 2010 which has now nominally expired but may still be operating in your business if you haven't:

- replaced it with a new enterprise agreement (EA); or
- applied to have the zombie agreement terminated formally with the Fair Work Commission (FWC).

The FWC estimates that there are more than 100,000 of these agreements still operating in Australian workplaces.

Why are they important?

Unlike EAs which have been developed and approved since 1 January 2010 (i.e. since the FW Act came into effect), zombie agreements have not been benchmarked against an applicable Modern Award to confirm whether employees are "better off overall" or not under these zombie agreements.

Therefore, employees covered by zombie agreements may be (technically lawfully) engaged on less beneficial terms and conditions than they would otherwise receive under the applicable Modern Award.

How do I check if any of my employees are covered are covered by zombie agreements?

Helpfully, the FWC has published a list of zombie agreements [here](#).

It is critical to note that this list is not exhaustive – meaning that there may be other zombie agreements floating around in operation that are not included on the list, including a notable lack of complete records for agreements made between 2006 to 2009.

Therefore, we recommend checking the list prepared by the FWC, but also confirming internally on historical agreements and industrial instruments with your human resources and / or people & culture team.

Can I extend a zombie agreement?

Organisations can apply to extend a zombie agreement beyond 7 December 2023.

It's key that if you want to try and extend the life of your zombie agreement, that you do so before 7 December 2023 via an application to the FWC.

Details of the application and application process can be found [here](#).

Do we need to do anything right now?

If you have zombie agreements in your organisation, and any employees are covered by these, you must notify the affected employee/s by written communication on or before 6 June 2023.

The written notification should inform the employee/s that they are:

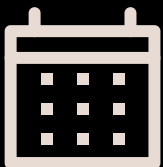
- covered by a zombie agreement;
- the zombie agreement will terminate on 7 December 2023;
- whether your organisation intends to apply for an extension to the agreement or not; and
- the consequences of this (i.e. reversion to the applicable Modern Award, or continuation of the zombie agreement if approved by the FWC).

If your organisation does not intend to apply for an extension, the notification must also include details of subsequent coverage either under the National Employment Standards or relevant Modern Award.

What's the risk of getting this wrong?

Penalties for non-compliance are significant (up to \$16,500 per breach (for individuals involved) and \$82,500 per breach (for the company)).

Mark your diary now!



6 June 2023

Last day to notify impacted employees by written communication before penalties are applicable

7 December 2023

Zombie agreements sunset (if no extension is sought and approved)



Need help to managing
Zombie Agreements,
or have other employment questions?

We are here to **help**



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